

Indianapolis Air Pollution Control Board

Regulation 31 Limited Liability for Failure to Obtain Permit

(Amended November 13, 1997)

(Effective January 4, 1998)

Comparable state regulation: I.C. 13-10-4-1
(effective July 1, 1994)

Section 1. Definitions

1-1. The terms used in this Regulation 31, have the following definitions.

- (1) "Facility" means a single structure, piece of equipment, installation or operation that emits or has the potential to emit a regulated air pollutant.
- (2) "FESOP" means a federally enforceable operating permit issued to a source that would require a Title V operating permit but due to federally enforceable operating restriction has potential emissions less than the amount that would require a Title V operating permit.
- (3) "Source" means an aggregation of one (1) or more facilities that are:
 - (a) located on one (1) piece of property or on contiguous or adjacent properties; and
 - (b) owned, operated or controlled by the same person.
- (4) "Title V operating permit" means a permit required by 42 U.S.C. 7661a.
- (5) "Pending" means not completed as of January 1, 1994.
- (6) "Potential emissions" means emissions calculated:
 - (a) before:
 - (i) the installation of air pollution control equipment; and
 - (ii) the application of any applicable local, state or federal regulation that establishes emission limits or standards; and
 - (b) after consideration of any physical or operational limitation on the capacity of a facility or source.

Section 2. Limited Liability

2-1. Except as otherwise provided in this regulation, if a person:

- (a) constructed, reconstructed, modified or operated a facility or source that emits, or is capable of emitting, into the atmosphere a regulated pollutant in an amount

such that a construction permit or an operating permit is required by Indianapolis Air Pollution Control Board Regulation II (Permits);

- (b) fails to obtain the construction permit or operating permit as required;
- (c) meets the conditions described in Section 3; and
- (d) pays a civil penalty described in Section 7; the person's failure to obtain the construction permit or operating permit does not result in any liability beyond the liability described in this Regulation 31.

Section 3. Conditions for Limited Liability

3-1. All of the following conditions must be satisfied for a person to qualify for the exemption from liability established in Section 2:

- (1) If the source is required to obtain a Title V operating permit, a complete permit application for a Title V operating permit, a FESOP or an enforceable operating agreement that includes the existing and unpermitted facility or source is submitted to the administrator not later than **November 16, 1996**. The permit application submitted under this subsection must comply with:
 - (a) the requirements of 40 CFR 70.5(a)(2); and
 - (b) all regulations adopted by the Indianapolis Air Pollution Control Board implementing 40 CFR 70.5(a)(2).
- (2) If the source is not required to obtain a Title V operating permit, a complete application for a construction permit for the existing and unpermitted facility or source is submitted to the administrator not later than **November 16, 1996**. The construction permit application must comply with all regulations adopted by the Indianapolis Air Pollution Control Board.
- (3) Each existing emitting facility or source for which limited liability is claimed under this Regulation 31 is clearly identified in the application under Section 1 or 2, whichever is applicable.
- (4) The emitting facility or source was constructed or modified before January 1, 1994.
- (5) The emitting source was not the subject of a completed administrative or civil action for failure to obtain a necessary air construction or operating permit during the following period:
 - (a) after January 1, 1989; and
 - (b) before January 1, 1994.
- (6) The source is not the subject of a pending administrative or civil action for failure to obtain a necessary air construction or operating permit.

Section 4. Scope of Limited Liability

4-1. This regulation does not:

- (1) limit the scope of a person's liability for criminal penalties under IC 13-7-13;

- (2) excuse or prohibit enforcement of violations of any local, state or federal health based or technology based standard, including national primary and secondary ambient air quality standards;
- (3) excuse a facility or source for failure to obtain in advance a construction permit required by the prevention of significant deterioration or new source review requirements of the federal Clean Air Act under U.S.C. 7470 et seq. (Part C) or 42 U.S.C. 7501 et seq. (Part D); or
- (4) apply to an individual facility at a source:
 - (a) that has potential emissions of more than one hundred (100) tons per year of any regulated pollutant;
 - (b) to which the Indianapolis Air Pollution Control Board had established permit requirements under regulations in effect on January 1, 1994; and
 - (c) that never received an operating permit under Indianapolis Air Pollution Control Board Regulation # 2 (Permits).

4-2. An enforcement action that has been resolved or settled with the Administrator or any other person may not be reopened on the basis of this Section 4.

4-3. The limited liability granted by Section 2 shall not affect any causes of action to enjoin or abate emissions resulting from the operation of an existing emitting facility or source.

4-4. The sole civil penalty for failure to possess a permit as described in Section 2, regardless of the number of facilities in the application filed under Section 3 is as follows, unless limited to a lesser amount by Section 4-66 of the Code of Indianapolis and Marion County:

- (1) For a person who submits a timely and complete Title V operating permit application under section 3:
 - (a) three thousand dollars (\$3,000); and
 - (b) an amount equal to the amount charged for an annual operating permit fee for all facilities or sources owned or operated by that person which should have been permitted, based on fees established for 1993 in Chapter 4 of the Code of Indianapolis and Marion County.
- (2) For a person who submits a timely and complete application for a FESOP, an enforceable operating agreement under Subsection 3-1(1) or a timely and complete application for a construction permit under subsection 3-1(2);
 - (a) two thousand dollars (\$2,000); and
 - (b) an amount equal to the amount charged for an annual operating permit fee for all facilities or sources owned or operated by that person which should have been permitted, based on fees established for 1993 in Chapter 4 of the Code of Indianapolis and Marion County.

4-5. The limitation on liability provided under section 2 only applies to an administrative or judicial enforcement action brought against a person for failure to possess a valid construction permit or operating permit. This Regulation 31 does not apply to any other type of violation.
(Adopted April 28, 1994)

Documents incorporated by reference are available from the Indiana Department of Environmental Management, Indiana Government Center, 100 North Senate Avenue, Indianapolis, IN 46204-2220, or the Indianapolis Air Quality Management Section, 2700 South Belmont Avenue, Indianapolis, Indiana 46221. (317-327-2234)